



November 20, 2002

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2002-6630

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172506.

The Texas Youth Commission (the "commission") received a request for copies of documents pertaining to the requestor's termination grievance hearing. The requestor subsequently clarified that he was also seeking copies of certain specified information as follows: 1) a request for polygraph testing; 2) a request for handwriting analysis; 3) a letter of probation; 4) a note written by Mr. Vernon Jackson; 5) a letter of termination; 6) a letter written by Ms. LaWonda Alexander; 7) a statement written by Ms. Sidney McGraw; 8) a pregnancy exam; 9) a sexual misconduct investigation; 10) questions asked of students during an investigation of the requestor; and 11) tapes of the requestor's grievance hearing. *See Gov't Code § 552.222* (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the commission did not submit any responsive information to us pertaining to request items one, three, and five through seven of the clarified request. We, therefore, presume that the commission has already provided the requestor with this information to the extent that it exists. If not, the commission must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the commission received the written request on August 29, 2002. Therefore, the commission had until September 13, 2002 to ask the attorney general for a decision as to whether any portion of the requested information could be withheld from disclosure. However, we note that this office did not receive the commission's request for a decision concerning a portion of the requested information until September 17, 2002. *See* Gov't Code § 552.308. In addition, we note that the information that the commission submitted with the clarified request for decision regarding the remaining requested information indicates that the commission received the clarified request from the requestor on October 28, 2002. Therefore, the commission had until October 30, 2002 to ask the attorney general for a decision as to whether any portion of the information responsive to the clarified request could be withheld from disclosure. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification). However, this office did not receive the commission's request for a decision concerning the clarified request until November 8, 2002. Accordingly, we conclude that the commission failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b).

Because the commission failed to request a decision from us within ten business days of receiving the request, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The commission must demonstrate a compelling interest in order to overcome this presumption of openness. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Since the commission claims that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code, we will consider that claim with respect to the submitted information.

You claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ Section 261.201(a) provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the information that you claim to be confidential under section 261.201 relates to an allegation of child abuse, it falls within the scope of section 261.201 of the Family Code. Therefore, the records at issue are confidential and may not be disclosed except as permitted by that provision. We note, however, that the commission has adopted rules concerning investigations of alleged abuse or neglect. *See* Gov't Code § 261.401 (requiring state agency that operates, licenses, certifies, or registers facility in which children are located to (1) investigate reports of neglect or abuse and (2) adopt rules, to be approved by the Health and Human Services Commission, for such investigation and resolution); *see also* 37 T.A.C. § 93.33. You do not inform us, nor does it appear, that the commission's rules permit disclosure of this information in this instance. Accordingly, we conclude that the commission must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 61.073 of the Human Resources Code. Section 61.073 provides:

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Section 58.005(a) of the Family Code provides that “[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court” may only be disclosed to only certain individuals under certain circumstances. After carefully reviewing your representations and the information at issue, we find that no portion of this information constitutes records of the examination of a student in the custody of the commission, or orders concerning the disposition or treatment of a student in the custody of the commission. Therefore, section 61.073 does not apply to the information at issue. Accordingly, we conclude that the commission may not withhold any portion of the information at issue pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

However, we note that section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Based on our review of the information at issue, we find that the names and identifying information of the juvenile offenders contained in the submitted documents and audiotapes are protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the commission must withhold this information in the submitted documents pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *Cf.* Fam. Code § 58.007. Furthermore, since the identifying information of juvenile offenders contained within the submitted audiotapes is interspersed throughout the audiotapes, we conclude that the commission must withhold the entirety of all submitted audiotapes pursuant to section 552.101 in conjunction with the common-law right to privacy.

In summary, the commission must release the information that is responsive to items one, three, and five through seven of the clarified request to the extent that the commission has not already provided the requestor with this information and to the extent that it exists. The commission must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The commission must withhold the identifying juvenile offender information in the submitted documents pursuant to section 552.101 in conjunction with the common-law right to privacy. The commission must also withhold the entirety of all submitted audiotapes pursuant to section 552.101 in conjunction with the common-law right to privacy. The commission must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 172506

Enc. Marked documents

c: Mr. James Gooden
3223 NW CR #2004
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(w/o enclosures)